

**Gary Klein**  
**August 29, 2017**

Volume I  
Pages 1-188

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

No. 1:17-cv-10107-WGY

DAVID SETH WORMAN, et al.,  
Plaintiffs,  
vs.

CHARLES D. BAKER, et al.,  
Defendants.

DEPOSITION OF GARY KLEIN  
Tuesday, August 29, 2017 at 9:10 a.m.  
Campbell, Campbell, Edwards & Conroy  
One Constitution Center  
Boston, Massachusetts 02129

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**Gary Klein**  
**August 29, 2017**

**17**

1           A.     No, I don't. I'm not aware of a compiled  
2 source that would allow me to get such information.  
3 I'm aware of some incidents but not a compiled set  
4 of data.

5           Q.     How many incidents are you aware of?

6           A.     I think most prominently I'm aware of the  
7 Edgewater Technologies shooting. It happened in  
8 Wakefield, Massachusetts in 1999.

9           Q.     And what firearms were involved in that?

10          A.     To the best of my knowledge, it was an AK  
11 47 of some type.

12          Q.     Do you know if that was subject to any ban  
13 at the time?

14          A.     No, and that's one of the problems with  
15 the question your asking. It's hard to know without  
16 examining a weapon and getting its manufactured date  
17 whether the weapon used particularly was banned.  
18 It's easier to know what the category of weapons was  
19 banned, and certainly at the time AK 47s were banned  
20 in Massachusetts.

21          Q.     At the time they were also banned  
22 federally, correct?

23          A.     That's right.

24          Q.     So they were banned nationwide as a

**Gary Klein**  
**August 29, 2017**

**31**

1 deposition only, and obviously the responses to this  
2 document we want to make sure we agree to our  
3 terminology. Is that fair?

4 MR. PORTER: Yes.

5 BY MR. SWEENEY:

6 Q. My question was: Can we agree that when  
7 we refer to "banned magazine," it refers to all  
8 magazines included in the definition of large  
9 capacity feeding device pursuant to Massachusetts  
10 General Laws Chapter 140, Section 121?

11 A. Yes.

12 Q. And when we refer to "challenged laws" in  
13 this deposition, can we agree we'll be referring to  
14 Massachusetts General Laws Chapter 140, Sections 121  
15 and 131M?

16 A. It may depend on the context, but yes.

17 Q. When we refer to "semi-automatic," can we  
18 agree we will be referring to the operating  
19 mechanism of a firearm which only a single round is  
20 discharged each time the trigger is pulled?

21 A. Yes.

22 Q. When we refer to "enumerated banned  
23 firearm," we will be referring to firearms listed by  
24 name, model, make, manufacturer in Massachusetts

**Gary Klein**  
**August 29, 2017**

**49**

1 previously in your testimony today?

2 A. Yes.

3 Q. And as you sit here today, do you know of  
4 any other incidents not identified in this  
5 interrogatory response that involves a banned  
6 firearm or banned magazine used to commit a crime in  
7 Massachusetts?

8 A. It's a hard question to answer because the  
9 records are not compiled. I'm aware of some records  
10 that were produced in connection with the EOPSS  
11 response to the interrogatory request sent to  
12 them.

13 Q. Are you referring to the Attachment A that  
14 they provided to their discovery response?

15 A. Yes.

16 Q. And other than that, as a result of your  
17 review you did and you described previously, are  
18 there any other specific incidents that you can  
19 identify?

20 A. There are many incidents from outside  
21 Massachusetts which involved firearms that are  
22 banned in Massachusetts.

23 Q. I understand that from your previous  
24 response, but my question is: Are there any other

**Gary Klein**  
**August 29, 2017**

**50**

1 incidents involving the use of those firearms in  
2 Massachusetts to commit a crime other than  
3 identified in the response to Interrogatory 1?

4 A. I have no doubt that there are other  
5 incidents, but there is no readily available way to  
6 identify them with precision.

7 Q. Now, directing your attention to the  
8 second interrogatory referring to any incident which  
9 more than ten shots were fired by a single criminal  
10 perpetrator in a single incident in Massachusetts,  
11 again, you identify the Wakefield, Massachusetts  
12 event, and that indicates 37 rounds were used by the  
13 perpetrator. How many firearms were used?

14 A. It's unclear.

15 Q. How many magazines were used?

16 A. It's unclear.

17 Q. Do you know what the capacity of the  
18 magazines was?

19 A. No.

20 Q. There is a second incident here involving  
21 East Boston which says, "An October 12, 2016,  
22 incident in East Boston resulted in injuries to two  
23 police officers. The perpetrator appeared to fire  
24 more than ten rounds."

**Gary Klein**  
**August 29, 2017**

52

1 stated. The East Boston incident was not  
2 investigated or prosecuted by the Attorney General,  
3 so we would largely be -- to start answering that --

4 MR. SWEENEY: It is bad enough -- off  
5 the record.

6 (Discussion off the record.)

7 Q. Are you aware of any other incidents,  
8 other than the two identified here, in which more  
9 than ten shots were fired by a single criminal  
10 perpetrator in a single incident in Massachusetts?

11 A. I am confident that there are other  
12 incidents, but again, it would be difficult to  
13 identify them based on records available to the  
14 Attorney General.

15 Q. Now, Interrogatory No. 3 on Page 10 asked  
16 to identify any incident in which an individual used  
17 a banned firearm or banned magazine in self-defense  
18 in Massachusetts.

19 After objections, "The AG states she  
20 has no non-privileged information that is responsive  
21 to this interrogatory at this time."

22 I take it that you're not aware of  
23 any such incident?

24 A. I am not.

**Gary Klein**  
**August 29, 2017**

**53**

1 Q. And that would include use by law  
2 enforcement officers?

3 A. Correct.

4 Q. To your knowledge, law enforcement  
5 officers use banned firearms, correct?

6 MR. PORTER: Objection.

7 A. From time to time, yes.

8 Q. They also use banned magazines, correct?

9 A. I'm less certain that that's true.  
10 Probably.

11 Q. Probably they use them?

12 MR. PORTER: Well --

13 A. Yes. It is very hard for me to know --  
14 just to amplify this answer and make it clear, it's  
15 very hard for me to know which among magazines any  
16 particular law enforcement officer would use.

17 Q. In your review of firearms that began on  
18 October 2015, was your focus ever the capacity of  
19 the magazines used in firearms?

20 A. At some level I guess the answer is yes.

21 Q. Did you learn or review what the standard  
22 issue capacity magazine for the Massachusetts State  
23 Police or other law enforcement agencies in  
24 Massachusetts is?

**Gary Klein**  
**August 29, 2017**

**62**

1 that were deemed state complaint?

2 MR. PORTER: By the manufacturers,  
3 yes.

4 A. In what time period?

5 Q. Ever.

6 A. No.

7 Q. How many in 2015?

8 A. We have an estimate of the number of  
9 weapons which we believe are copies or duplicates of  
10 enumerated weapons. Some of them were deemed state  
11 compliant by the manufacturer; others weren't.

12 Q. And what is your estimate of how many of  
13 those firearms were sold in Massachusetts in 2015?

14 A. 7,000 to 12,000 would be the estimate, and  
15 I would note there is some complications with  
16 estimating in this issue.

17 Q. There is a statement a couple lines above  
18 the one we were just focused on. It said, "But  
19 despite the laws on our books that ban these  
20 weapons, more than 10,000 of them were sold here in  
21 Massachusetts last year alone." Do you see that?

22 A. I do.

23 Q. What is the basis, to your knowledge, of  
24 that 10,000 number?



**Gary Klein**  
**August 29, 2017**

72

1 terms, I would say clones of AR 15 or AK 47 or near  
2 clones would probably be more accurate.

3 Q. When you began your review in October of  
4 2015, you did not have to guide you in that review  
5 the tests for copies and/or duplicates that appear  
6 in the July 20, 2016 Notice of Enforcement. Am I  
7 correct?

8 A. We did not have that definition, that's  
9 correct.

10 Q. And am I to understand that the definition  
11 you used of copies and/or duplicates in conducting  
12 your compliance review was clones of enumerated  
13 firearms?

14 MR. PORTER: Objection to the form.

15 A. You know, what we were looking for are the  
16 guns that everybody in the gun community understands  
17 to be AR-15s or AK-47s even if they're not labeled  
18 Colt 15 or Avtomat Kalashnikov AK-47s.

19 Q. Did that complete your response?

20 A. Yes.

21 Q. It says: "The AG did not submit a written  
22 report of these findings to any other agency"; is  
23 that correct?

24 MR. PORTER: Objection to the form.

**Gary Klein**  
**August 29, 2017**

**86**

1           A.     At some level, yes.

2           Q.     So to what extent did your review involve  
3 assaults on law enforcement officers with banned  
4 firearms or magazines?

5           A.     Publicly available information.

6           Q.     That would be the same publicly available  
7 information you described earlier; media reports and  
8 some publicly available journal articles?

9           A.     Those kinds of things, yes.

10          Q.     And am I correct that those are -- those  
11 publicly available documents are document that it's  
12 your understanding would be produced to us if they  
13 have not been produced to us already?

14          A.     I don't think we turned up any reports in  
15 Massachusetts, so I'm not sure there would be  
16 documents.

17          Q.     Other than perhaps the East Boston  
18 incident that we talked about in -- I believe it was  
19 in Interrogatory 2 or 3, are you aware of any  
20 incidents in which banned firearms or magazines have  
21 been used to assault law enforcement officers in  
22 Massachusetts?

23          A.     Not in Massachusetts, but there are many  
24 reports nationally.

**Gary Klein**  
**August 29, 2017**

**118**

1 2016 can be sold in Massachusetts by an individual  
2 gun owner?

3 A. Yes.

4 Q. What have you responded?

5 A. The typical answer is: We address this  
6 question on the website. Here's the web address.  
7 That should answer your question.

8 Q. Have there been inquiries about whether or  
9 not an individual can sell an assault weapon  
10 obtained prior to July 20, 2016 to a dealer in  
11 Massachusetts?

12 A. To a dealer?

13 Q. Yes.

14 A. I can't say for sure.

15 Q. We talked earlier about the interrogatory  
16 answer that listed the individuals who were involved  
17 in preparing the Notice of Enforcement, and you  
18 confirmed that those were the individuals. I  
19 noticed that the Attorney General Maura Healey's  
20 name did not appear on that list.

21 Did she have any involvement in  
22 preparing the Notice of Enforcement?

23 A. Did she have any involvement? Yes.

24 Q. What was her involvement?

**Gary Klein**  
**August 29, 2017**

**123**

1 if we can get where we need to get.

2                   You would agree with me there are two  
3 tests that are set out under guidance that  
4 alternatively may determine whether an assault  
5 weapon is banned as a copy or duplicate of the  
6 enumerated weapons. Am I correct?

7           A.    Yes.

8           Q.    Now, those tests do not appear in the  
9 underlying statute that bans assault weapons in  
10 Massachusetts, correct?

11          A.    Correct.

12          Q.    So what I'm asking you is where did the  
13 language in these two tests come from? Where did  
14 you get them?

15          A.    As written by a group of people that I  
16 have identified for you in the interrogatory  
17 answers.

18          Q.    So it was written by that, essentially,  
19 committee, that group, all those individuals that  
20 are listed as having input in the Notice of  
21 Enforcement? Is that your testimony?

22          A.    Everyone had some input, people at  
23 different levels, but yes.

24          Q.    Were there any sources or authorities,

**Gary Klein**  
**August 29, 2017**

**131**

1           A.     I agree those tests are not in the  
2 statute.

3           Q.     Is there anything in this guidance that  
4 gives my client assurance that those tests won't be  
5 applied to any transactions that occurred prior to  
6 the Notice of Enforcement?

7           A.     I think that my answer is the same as the  
8 last one I gave. It's the two paragraphs at the end  
9 of Paragraph 4, limiting the application of the  
10 enforcement notice.

11                   MR. PORTER: End Page 4?

12                   THE WITNESS: End of Page 4.

13                   MR. PORTER: You said Paragraph 4.

14           A.     Page 4, sorry.

15           Q.     When I tried to ask what they meant, you  
16 were instructed not to answer on grounds of  
17 privilege. So I'm trying to understand what those  
18 two application paragraphs mean and all I'm hearing  
19 is, I'm instructed not to answer on the grounds of  
20 privilege. So --

21           A.     May I ask a question?

22                   MR. PORTER: Again, impose the  
23 objection because it's asking for a commitment in  
24 advance or at least an answer in advance to a

**Gary Klein**  
**August 29, 2017**

135

1 weapon ban, and they go over to the top of Page 2,  
2 and the third little i says "otherwise rendered  
3 permanently unable to be designated as  
4 semi-automatic assault weapon." That would be an  
5 exception from the assault weapon ban, correct?

6 A. Yes.

7 Q. And so if a semi-automatic firearm was  
8 rendered unable to be designated as a semi-automatic  
9 assault weapon, it would no longer be subject to the  
10 ban, correct?

11 A. I'm confused. The exception you're  
12 reading requires that the weapon be rendered  
13 permanently inoperable or otherwise permanently  
14 unable to be designated as a semi-automatic assault  
15 weapon.

16 Q. Right. Then it would no longer be subject  
17 to the ban, correct?

18 A. Yes.

19 Q. So it would no longer be a banned  
20 firearm?

21 A. As I sit here, I don't know that I know  
22 the answer to that question as a matter of law.

23 Q. So if an enumerated firearm was rendered  
24 incapable of semi-automatic fire, it would no longer

**Gary Klein**  
**August 29, 2017**

**136**

1 be subject to the ban because it would no longer be  
2 designated as a semi-automatic assault weapon?

3 A. I guess I'm not sure that I know, as a  
4 legal matter -- I'm really not trying to split  
5 hairs, I want to be sure I don't say something that  
6 certainly wouldn't be the policy of the office --  
7 that if someone bought a semi-automatic assault  
8 weapon and 15 minutes before prosecution rendered it  
9 inoperable, then therefore they no longer have  
10 violated the law, so I want to be clear enough about  
11 that. I'm not able to answer that question. Does  
12 that make sense?

13 Q. No, not at all.

14 MR. PORTER: Well, wait a minute.

15 A. It's for personal --

16 Q. I mean, you just hypothecated a bizarre  
17 instance. I'm talking generally speaking --

18 A. That's not at all bizarre.

19 Q. -- if a firearm -- if a firearm is  
20 rendered unable to fire semi-automatically, would  
21 that make it no longer a banned assault weapon?

22 MR. PORTER: I'll object to the  
23 question, the form of the question, and I also  
24 believe it's been asked and answered.

**Gary Klein**  
**August 29, 2017**

147

1 weapon as the manufacturer publishes them.

2 Q. And what is it about the specs that the  
3 Office of the Attorney General relies upon to  
4 determine whether or not the internal functional  
5 components are substantially similar in construction  
6 and configuration?

7 A. Whether the specs suggest that the weapon  
8 is substantially similar in construction and  
9 configuration. You know -- let me stop there.

10 Q. How does the citizen wishing to purchase a  
11 semi-automatic rifle determine whether or not the  
12 internal functional components are substantially  
13 similar in construction and configuration to those  
14 of an enumerated weapon?

15 A. We expect in the first instance that the  
16 gun seller is going to help them make that  
17 determination and that the gun seller knows whether  
18 the gun, for example, is effectively an AR-15 for  
19 all intents and purposes, but if there was any  
20 doubt, the manufacturer would know.

21 Q. So have you provided, you, the Office of  
22 the Attorney General, provided any guidance to  
23 dealers in Massachusetts on how to determine whether  
24 or not internal functional components are



**Gary Klein**  
**August 29, 2017**

**152**

1 A. Yes.

2 Q. On the top of Page 3, the third paragraph:  
3 "These deadly assault weapons were originally  
4 designed for military combat." Do you see that?

5 A. Yes.

6 Q. Do you agree with that statement?

7 A. Yes.

8 Q. What military service do you know uses  
9 semi-automatic rifles?

10 A. The United States.

11 Q. Really? Which military service?

12 A. The M4 weapon which is used certainly by  
13 the Marines, probably by the infantry, is a  
14 semi-automatic weapon that also has a burst mode  
15 which allows it to fire three shots with one trigger  
16 pull, but it's not an automatic weapon.

17 Q. A burst mode is three shots with the pull  
18 of one trigger, correct?

19 A. That's my understanding, yes.

20 Q. It is three shots that fire automatically  
21 with the pull of one trigger although it is not  
22 fully automatic in the sense that it continues to  
23 fire bullets until the magazine is empty so long as  
24 the trigger is depressed?

**Gary Klein**  
**August 29, 2017**

**153**

1           A.     Correct.

2           Q.     These firearms that are banned in  
3 Massachusetts for civilian use are used by your law  
4 enforcement officers, correct?

5           A.     I don't know if I would agree with the  
6 term "used." They're available to law enforcement  
7 officers.

8           Q.     Well, aren't they standard issue for some  
9 of your law enforcement agencies?

10          A.     Yes, but there are weeks of training  
11 before they are issued and there are very specific  
12 instructions, most of which prohibit their use  
13 rather than encourage their use.

14          Q.     So your law enforcement officers are armed  
15 with military weapons for their policing of  
16 Massachusetts citizens, in your opinion then?

17          A.     They are armed with AR-15s in most  
18 cases.

19          Q.     Which are or are not military weapons?

20          A.     They're weapons that are based on designs  
21 of weapons that were first manufactured for military  
22 purposes, yes.

23          Q.     But the AR-15 is the civilian version of  
24 the firearm that was manufactured for military

**Gary Klein**  
**August 29, 2017**

**154**

1 purpose, correct?

2 A. Yes, although it still has most of the  
3 features other than automatic follow of the military  
4 weapon.

5 Q. And what are those features other than  
6 fully automatic firearm?

7 A. Are you asking from a technical  
8 perspective?

9 Q. Yes, you just said. What are those  
10 features you're referring to?

11 A. Well, you can fire a lot of shots very  
12 quickly. It really is -- just the difference is  
13 that you have to pull the trigger as quickly as you  
14 can and the shots will fire. There is typically a  
15 semi-automatic mechanism that operates very  
16 efficiently.

17 The ammunition is the same or  
18 similar. The magazine construction and designed is  
19 the same or similar. The way in which it is fired  
20 and the availability of sighting mechanisms is the  
21 same or similar. The penetrating capacity is the  
22 same or similar. The velocity of the ammunition as  
23 it leaves the weapon is the same or similar. I'm  
24 sure that's not an exhaustive list.

**Gary Klein**  
**August 29, 2017**

**161**

1           A.     "To guns," yes.

2           Q.     Is that a correct statement of the  
3 qualification on the guidance that's in the Notice  
4 of Enforcement?

5           A.     I think so, yes.

6           Q.     By this directive it's meant the Notice of  
7 Enforcement and particularly the guidance on the  
8 definition of copies and duplicates, correct?

9           A.     I'm sorry. I don't understand the  
10 question.

11          Q.     So when this sentence says, "So this  
12 directive will not apply," "this directive" means  
13 the Notice of Enforcement and specifically the test  
14 for copies or duplicates of assault weapons?

15          A.     As we discussed, yes.

16          Q.     So am I safe in concluding from the  
17 Attorney General's statement here that the test for  
18 what is a copy or duplicate will not be applied to  
19 any guns bought or sold before July 20, 2016?

20          A.     The enforcement notice won't be applied,  
21 correct.

22          Q.     When you say "enforcement notice," you're  
23 including the guidance on the two tests for  
24 determining whether or not a firearm is a copy or

**Gary Klein**  
**August 29, 2017**

**162**

1 duplicate of an assault weapon?

2 A. Yes, and further to clarify, we are  
3 referring here to the two paragraphs at the end of  
4 Page 4 of the enforcement notice.

5 Q. So if one of my client dealers has  
6 purchased a firearm in the past and sold it and no  
7 longer is in possession of it, this directive will  
8 not be applied to those guns?

9 A. A directive would not be applied but the  
10 assault weapon ban may be, the statute may be.

11 Q. Because it might otherwise apply?

12 A. Yes.

13 Q. What was the definition of copies and  
14 duplicates that was used prior to the Notice of  
15 Enforcement test for copies or duplicates?

16 MR. PORTER: Objection as to form.

17 A. I'm sorry, can I get the question read  
18 back?

19 MR. SWEENEY: Read the question  
20 back.

21 (The question was read back.)

22 A. Could you rephrase the question?

23 Q. You said the tests that are in the Notice  
24 of Enforcement won't be used for anything prior to

**Gary Klein**  
**August 29, 2017**

**170**

1 Q. Magazines that are banned, do you have any  
2 information about how many of them are estimated to  
3 be in circulation in the United States?

4 A. No.

5 Q. Would the number of greater than, you  
6 know, a hundred million of those magazines surprise  
7 you?

8 A. I don't have any basis to know.

9 Q. Do you have any information to disagree  
10 that there are more than 50 percent of all magazines  
11 sold in the United States, the banned magazines in  
12 Massachusetts?

13 A. I don't have any basis to know.

14 Q. Would you agree with me that in  
15 firearm-related crime in Massachusetts handguns are  
16 overwhelmingly used over rifles?

17 A. Could you define "overwhelmingly"?

18 Q. I don't know, fifty or hundred to one?

19 A. I think there are a lot more -- I think  
20 that the data suggests that more handguns are used  
21 in a crime than rifles.

22 Q. Many more?

23 A. I think that's fair.

24 Q. And handguns are the most common firearm

**Gary Klein**  
**August 29, 2017**

**171**

1 used to assault police officers, correct?

2 A. Yes, but there are many reports of police  
3 officers being assaulted with assault weapons as  
4 well. Probably a disproportion number of assaults  
5 on police officers occur with assault weapons.

6 Q. "Probably," you said. What is your  
7 support for that data?

8 A. The Kolbe record, I guess, is one source  
9 of support.

10 Q. Is there anything else outside the Kolbe  
11 record that you can identify today as supporting  
12 that statement?

13 A. You know, there are reports about mass  
14 shootings, including mass shootings involving police  
15 officers. And I believe you can glean those reports  
16 for more information on the question.

17 Q. You don't have any information that a law  
18 enforcement officer has ever been assaulted with a  
19 banned firearm in Massachusetts, correct?

20 A. Putting aside the question about the East  
21 Boston incident, no, I don't.

22 Q. Do you know why law enforcement officers  
23 in Massachusetts choose to use banned firearms?

24 MR. PORTER: Objection. I think the

**Gary Klein**  
**August 29, 2017**

**173**

1           A.     They don't really use them for duty, so I  
2     can't answer the question.

3           Q.     They don't use them off-duty, do they?

4           A.     They use them in certain circumstances for  
5     duty.  Mostly they carry handguns for duty  
6     purposes.

7           Q.     You don't know whether those handguns have  
8     a banned magazine or not in Massachusetts?

9           A.     Well, I know that the banned magazines are  
10    accessible to some police departments.  I don't know  
11    how many make them accessible and I don't believe  
12    that many officers walk a beat with a banned  
13    magazine.

14          Q.     But your office doesn't have any  
15    information on that, no data?

16                   MR. PORTER:  Objection.

17          A.     Some information and based on oral  
18    reports.

19          Q.     Do you have information on the extent to  
20    which banned firearms are used for hunting in  
21    Massachusetts?

22          A.     No.

23          Q.     Do you have any information about the  
24    extent to which they are used for target shooting in



**Gary Klein**  
**August 29, 2017**

178

1 get a witness to ask counsel to instruct him not to  
2 answer.

3 A. I did not instruct him. I was applying  
4 his instruction to me.

5 Q. Does your office have a process for  
6 determining questions from the public about whether  
7 a particular firearm is a copy or a duplicate?

8 A. Yes.

9 Q. What is that process?

10 A. We get very few requests of that type, but  
11 when we do, if we have an opinion, we tell them  
12 that -- we tell the inquirer that it's our belief  
13 that the weapon is a copy or duplicate but recommend  
14 that if they have any doubt that they speak with  
15 their gun seller or manufacturer. In some cases we  
16 don't know, I mean, we do further review.

17 (Exhibit Nos. 7 and 8 marked for  
18 identification.)

19 BY MR. SWEENEY:

20 Q. Could you look at Exhibit 7, please, and  
21 see if you can recognize that document. I will  
22 represent to you that's a printout from a website  
23 Mass.gov/ago/public-safety/awde.html that was  
24 printed out on August 28.